A Social History of Company Law – Great Britain and the Australian Colonies 1854-1920, by Rob McQueen, Farnham, Ashgate Publishing, 2009, ISBN 978-0-7546-2168-3 (xii + 362 pages)

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Corporate law scholarship has long been open to ideas drawn from other disciplines, such as economics. Professor Rob McQueen's new social history of British company law reminds us that if we are to fully understand company law it is useful to be historically informed. He suggests that many "dysfunctions of the modern corporate law are…difficult to understand without some grasp of its history" (p. 319). McQueen adds that social and policy debates would be much enriched if we are aware of these historical dimensions.

We have seen a number of important scholarly contributions to our understanding of the emergence of English company law, such as Ron Harris's 2000 study, *Industrializing English Law*, covering the period from the passage of the Bubble Act in 1720 to the passage of the Companies Act of 1844; the period immediately prior to that dealt with by McQueen. RW Kostal has also illustrated the close connection between the development of English company law and the railway booms of the mid-nineteenth century. Others, such as J Willard Hurst, have undertaken similar historical analyses in regard to the emergence of the corporation in the USA since 1780.

More recently, we have also seen some historically-focussed studies, such as Brian Cheffins' 2008 study of ownership and control issues in English public companies. Mainstream historians have also looked at related developments, such as Ranald Michie's magisterial history of the London Stock Exchange. McQueen makes little use of stock exchange-related explanations; this is because the Exchange played a limited role in placing shares of limited liability companies during the first decade or so after the enactment of limited liability legislation (p. 159).

McQueen's book has nine chapters; apart from an introduction and a conclusion chapter, Chapters 2 and 3 deal with social attitudes to company law up to 1855 and early limited liability debates; Chapter 4 discusses the reasons for the enactment of limited liability legislation in 1855-56; this is followed by three chapters that review subsequent developments, leading to the consolidation of company law reforms between 1886 to 1914; McQueen also provides a chapter that looks at company law reforms in the British colonies, with particular reference to the Australian experience from 1864 to 1920.

What is interesting in McQueen's book is that it shines light upon the critical 50 year period after the enactment of the first modern company law in Britain, the 1856 Joint-Stock Companies Act. This occurred 30 years after the repeal of the Bubble Act in 1825 which was followed by the failed 1844 Joint Stock Companies Act which had sought to set a higher standard of openness and transparency for English companies; alas, accounting techniques had yet to develop sufficiently to make this practical. McQueen's analysis extends to the first decade of the twentieth century and the 1895 recommendations of the Davey Committee and the disappointing 1907 Companies Act that followed it.

McQueen charts the shifting sands of English company law fought over by interest groups and ideologues and points to repeated failures by law makers to respond adequately to wider public interest concerns. This failure continued even in times of great market crisis, such as after the collapse of the Royal British Bank in 1856 and the collapse of Overend Gurney in 1866; (we might also look at the impact of the market panic of 1907, as described by Bruner and Carr). The effect of bank collapses and market crises on the shaping of English company law deserves to be closely examined. At the same time, the meaning of company law itself changed during the Victorian era; McQueen notes that there was a shift in the "legitimacy" of the corporation over these 50 years (p. 36). As Willard Hurst (1970) and others have shown, the question of legitimacy is a crucial one in company law.

For a long time there was a prejudice against companies in favour of partnerships; this prejudice relied in part on Adam Smith's criticisms of the reliability of public company directors in monitoring other people's money. The widespread adoption of the limited liability form led to a transformation of the idea of the company as a consequence of the "saturation" of the company form with partnership ideas (p. 274). As McQueen explains, at a critical time in its growth, this saw a "...contamination of principles of company law with those of partnerships" (p. 318-9). The failure to properly recognise private companies until the end of the nineteenth century added to this distorted development of company law, with older company law principles being preserved like "fossilized remains" (p. 274).

McQueen's "social history" becomes more insightful as it also looks at the diffusion of English company law into Britain's colonies; Chapter 8 is devoted to this topic. He then applies a colonial metaphor to the limited liability form itself when he speaks of the colonisation of the company form in England by the dominant partnership form (p. 234).

But the traffic in ideas from the colonizing power to the colonised entity has not always been one-way. As Ron Harris argued in a 2005 paper, legal ideas that had been developed in India by the East India Company were subsequently used to fashion English company law, although it is also true, as RS Rungta argued in 1970, that in later years limited liability companies in India often served English trading interests more than local ones. The transplantation of English law into colonial settings was often problematic; as McQueen explains, English law-makers "enshrined in English law ... a model of regulatory abstinence which ran against long-term community interests" (p. 174).

He was referring here to the dominant *laissez-faire* ethos which argued that the state should have a minimal role in company regulation; this narrow attitude was seen as a direct result of the Bubble Act which created "an enduring antagonism between the legal system and the business community on matters of regulation" (pp. 20-21). This *laissez-faire* attitude persisted at least until the 1907 Companies Act which largely exempted directors from liability to investors except in cases of extreme negligence (p. 269). The recent financial crisis has shown the dangers of such "light-touch" regulation and of the minimal involvement of the state in market regulation.

Instead of a concern for broader community interests, other values usually managed to trump claims by the public or by creditors for greater legislative protection when company law reform was being discussed. Thus, greater corporate disclosure of company accounts was seen to be less important than the protection of privacy in regard to internal company affairs. Imposing greater liability on directors was frequently opposed because it was argued that this would deter good persons from becoming directors; inevitably legislative proposals for reform were "watered down" or subject to many qualifications (p. 258 and p. 267). Better legal regulation of the use of debentures was resisted as this would conflict with "the prevailing ideology" which favoured "the business community regulating itself" (p. 215). Change was also resisted on the grounds that reforms, such as the imposition of enhanced publicity and reporting requirements, might erode business initiative (p. 166).

It was also argued that reforming rules regarding promoters and directors would affect legitimate business interest as well as corporations acting fraudulently; this was seen as potentially likely to harm economic growth; as McQueen notes, some saw economic growth as being more important than fraud prevention (p. 168). In keeping with this attitude, courts were reluctant to attribute criminal liability to promoters and directors, although attitudes did change slightly after about 1900. As Philip Augur (2000) had argued in regard to a period much closer to the present time, there continued to be a great reliance on "gentlemanly" assumptions in market regulation in England. McQueen notes that this view had been prevalent a century earlier when there was a "misplaced faith in gentlemanly ethics" as a way of creating honourable behaviour in commerce (p. 192).

The principal inversion of the colonial metaphor is to be found in McQueen's own study. As an Australian legal scholar he brings a different perspective to the study of English company law history. This may be because Australian company law and practice has evolved differently from that in England over the last 30 or 40 years. This probably explains McQueen's critical analysis of *laissez-faire* ideologies, as well as his discussion of the timid roles played by English courts and legislators. English reforms are frequently criticised for their failure to respond to wider public complaints; thus, McQueen notes that the 1890 Directors' Liability Act "was characteristically English in its timidity" (p. 251); he also refers to the "relatively tame" response of the legislature in this 1890 Act (p. 250); and refers to the "meek reforms" introduced in the 1900 Companies Act (p. 267).

The figure of Robert Lowe features prominently in McQueen's analysis. Often regarded as the father of English company law, Lowe was able to impose his permissive values upon the law making process during critical early years in the development of the modern company and fought against government interference in internal company affairs. McQueen points to Lowe's "extreme *liassez-faire* view" (p. 122). Whilst John Maloney has looked at his ideas more closely in his 2005 monograph, McQueen does paint a picture of how critical legislation can be shaped by a few well placed individuals.

When the 1856 Joint stock Companies Act was being debated, Lowe had savagely attacked the intrusive principles that had been accepted by the Gladstone Committee and had found their way into the 1844 Companies Act. As McQueen notes: "As a consequence of Lowe's acerbity in 1856, and his presence on all subsequent inquiries

into the operation of company law until his death on the 1880s, no genuinely 'regulatory' reforms were again advanced until the Davey Committee in the 1890s" (p. 8). This largely meant that the opportunity for reform was lost as by that time too many entrenched interests had emerged to oppose interventionist reforms.

McQueen challenges a number of established explanations concerning the rise of limited liability companies and the forces responsible for the unpredictable ascendancy of this business form. One of these was the argument that resort to incorporation was a response to a firm's need for capital. This was not the case with larger firms and in the case of smaller partnerships, their principal motivation for incorporation seems to have been to protect their controllers from insolvency through limited liability; this fear a serious concern of small business in the nineteenth century, as Markham Lester (1995) has noted.

Established larger business entities responded differently to calls for reform than did smaller businesses. Thus, big businesses did not seek to campaign for the introduction of new corporate forms (p. 78), and even opposed these (p. 123), being content with the older forms of business organisation (such as royal charters, acts of parliament, deed of settlement companies and partnerships). It was also very costly for new entrepreneurs to obtain private Acts of Parliament and such efforts could easily be blocked by established businesses that wished to prevent competition.

There was a fear that expanding limited liability might lower barriers to entry into business and create competition for larger established businesses; there was also a concern that companies would be required to make disclosures which conflicted with prevailing ideas of privacy. As a result, by 1885, only 5% to 10% of important businesses in England had incorporated as the partnership was their preferred business form (p. 96). This attitudes was to leave the door open to middle class interests to colonise the limited liability company form, as McQueen goes on to argue.

Some even argued against incorporation as a sign of a moral decline in English society (p. 89). Incorporation was seen as an abandonment of ideas of personal responsibility and unlimited liability which had been seen as the benchmarks of English industry (p. 90); unlimited liability was seen by many as morally superior; this served to exclude many small to medium investors who feared that they may be liable for bankruptcy if their businesses failed (p. 81). It is suggested that the fear of bankruptcy created a kind of middle class alienation up to the 1880s (p. 170). As McQueen concludes, incorporation therefore ran counter to "core cultural beliefs of those engaged in commerce" in the 1850s and 1860s (p. 89). Hostility that had existed in the mid-nineteenth century to the introduction of the limited liability served to "naturalise" a widespread perception that regulation had no place in company law (p. 95). This meant that the corporate form had to be made as attractive as possible to business by eliminating regulatory impositions (p. 95).

There is much else of interest here. The appearance of this book finally makes available work that has been presented in various forms by the author over the last twenty years or so; its message is probably more relevant today that it has been. Hopefully, it will encourage further historical studies to be undertaken into the evolution of specific company law principles touched upon in this book. It is a book

that should be widely read, even though it does not present an optimistic picture for law reformers.

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